

DM 00-179

PORTSMOUTH PUBLIC WORKS DEPARTMENT

**Probable Violation to the Underground Utility
Damage Prevention Program**

Order Regarding Assessment of Fines

O R D E R N O. 23,724

June 8, 2001

APPEARANCES: Representatives of Portsmouth Public Works Department (David Allen, City Engineer; Michael Jenkins, Water Foreman; Scott McGlynn, Assistant Water Foreman; John Adams, Equipment Operator), Representatives of Northern Utilities (Sharon Eon, Operations Manager; Robert Morin, System Maintenance Supervisor), Larry Eckhaus for Commission Staff.

I. PROCEDURAL HISTORY AND BACKGROUND

On April 19, 2000, Northern Utilities, Inc., in accordance with N.H. Admin. Rules Puc 803.02(e), reported damage within the boundaries of marked facilities located at 48 Ball Street in Portsmouth, New Hampshire, purportedly caused by the Portsmouth Public Works Department, which would constitute a probable violation of RSA 374:55, V.

An investigation of the site was conducted by the Safety Division of the New Hampshire Public Utilities Commission (the Commission) on April 20, 2000, which determined facilities on Ball Street had been marked.

On June 30, 2000, the Commission, pursuant to Puc 805.01, issued to Portsmouth Public Works Department, by certified mail, Notice of Probable Violation, Control No. 00013.

Pursuant to NHPUC Part Puc 805.02, and by letter dated July 10, 2000, Portsmouth Public Works Department requested an informal conference. This conference was held on August 7, 2000.

Based on information submitted by the parties at the informal conference, the Commission, pursuant to Puc 805.03, issued Notice of Violation No. 00013V on August 14, 2000, assessing a fine of one hundred dollars (\$100.00) to Portsmouth Public Works Department.

Pursuant to Puc 805.04(a), Portsmouth Public Works Department requested in writing a hearing before the Commission.

The Commission issued an Order of Notice on September 12, 2000, establishing a hearing to take place before the Commission on October 5, 2000.

At the October 5, 2000 hearing, the primary issue was whether or not the location had been properly marked at the time Portsmouth Public Works Department damaged Northern Utility's 1 1/4 inch plastic low pressure service at 48 Ball

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Street, Portsmouth, New Hampshire.

Testimony was presented by representatives of Portsmouth Public Works Department, Northern Utilities, and Commission Staff.

II. POSITION OF THE PARTIES

A. Portsmouth Public Works Department

John Adams, equipment operator for the City of Portsmouth, testified that during the installation of a new water main, the paint marks for service at 48 Ball Street came to the street and ran parallel in front of 28 Ball Street. He testified there were no markings coming across the street so he assumed the service came off the previous service at 28. At the time of the damage, number 28 was still exposed when Northern visited the site to look at number 48. He testified that Northern's marks had a two foot line running across, to indicate the end of the gas main, but that that was actually where the service crossed. The marks read: Aend of main@ and were located off >J= in the exhibit. He also saw markings between >B= and >C=. Upon seeing the marks on the left side of the road, he chose to excavate on the right side of the street. When he got to number 28, he noticed the main crossed the street so he veered out to the middle of the road to stay away from the gas line. The procedure that he typically follows is to dig up to the painted line and then hand shovel

until they find the line.

B. Northern Utilities

Robert Morin testified for Northern Utilities. He stated the Portsmouth Public Works Department contacted Northern Utilities on April 19, 2000 and reported damage to a line on Ball Street in Portsmouth. Northern dispatched a service technician to the scene and the scene was immediately made safe. Morin testified he could not see paint markings on April 19th due to the construction and equipment and spoils in the narrow street but that he saw flags visible off the pavement. He testified that he initially questioned whether the markings had been incorrect but that his trip on April 20, 2000 confirmed the marks were correct. In speaking with his employee, Mr. James Sawyer, he stated Mr. Sawyer said he had a good signal from both crossings and was confident he had marked them correctly. Mr. Morin never saw any marks Aend of main@ but he did see offset marks. Relating to exhibits showing the location of the facilities, he testified he saw markings for >J=, >D=, >E=, >H=, but not >C=.

He testified that the Dig Safe Ticket showed 400 feet of facilities of main and four gas services were marked prior to the excavation.

C. Staff

Mr. James Thyng of the NHPUC Safety Division testified he visited the site on April 20, 2000 with Mr. Morin and that he saw yellow paint markings on both sides of the excavation area. He did not see markings in the middle of the street due to the dirt in the middle of the street. He further testified that the yellow marking had a perpendicular leg to it indicating it was marking service to 48 Ball Street.

III. COMMISSION ANALYSIS

Upon a thorough review of the testimony and exhibits submitted in this case, the Commission is unable to find that a preponderance of the evidence supports a determination that the facilities were properly marked or marked in such a way so as to give notice to the excavator of the exact location of the facilities. Nor was the Commission able to find that Portsmouth Public Works Department violated provisions of the Underground Utility Damage Prevention Program.

Although the Commission considered each testifying witness to be credible, there was conflicting testimony at the October 5, 2000 hearing regarding whether the facilities were properly marked. Nor did the photographs that were introduced as exhibits clarify or help to resolve this question.

Based on the evidence and testimony presented at the hearing on October 5, 2000, the Commission is unable to conclude that a violation of RSA 374:55 has occurred; it therefore does not believe it is appropriate to assess a fine against Portsmouth Public Works Department.

Based upon the foregoing, it is hereby

ORDERED, that no fine shall be imposed on Portsmouth Public Works Department in this matter; and it is

FURTHER ORDERED, that this docket shall be closed.

By order of the Public Utilities Commission of New Hampshire this eighth day of June, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary